IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 497 OF 2003

Mr. Sydney Eric Duke,
House No.878,
Carxeta, Velim,
Salcete, Goa. ... Petitioner.

versus

1. State of Goa,
   by its Secretary(Revenue),
   Secretariat, Panaji, Goa.

2. The Deputy Collector & SDO,
   Sub-Division Salcete,
   Margao, Goa. ... Respondents.

Mr. A. F. Diniz, Advocate for the Petitioner.

Mrs. Winnie Coutinho, Government Advocate for the Respondents.

CORAM: A. M. KHANWILKAR &
P. V. HARDAS, JJ.

DATED: 11TH NOVEMBER, 2003.

**ORAL JUDGMENT**(PER A.M.KHANWILKAR,J.)

Rule. Rule made returnable forthwith by consent. Learned Government Advocate waives notice on behalf of the Respondents.

2. As short question is involved, matter is taken up for final disposal forthwith by consent.

3. By this Petition, under Article 226 of the Constitution of India, the Petitioner is challenging Notification No.22/8/02-RD dated 9th August, 2003, issued under Section 4 of the Land Acquisition Act, 1894 and Notification No.22//8/02-RD dated 10th September, 2003, issued under Section 6 of the Land Acquisition Act, 1894 as also steps taken on the basis of the aforesaid Notifications. The proposed acquisition by virtue of the aforesaid Notifications, is for construction of a road at Carxeta, Cutbona, Zuvem(additional area) in Velim Village Panchayat, Part I. It is not necessary to advert to all the events stated in the Petition except to state the principal grievance on the basis of which we are inclined to allow this Petition. It is asserted that no personal notice in respect of the proceedings under Section 5A was given to the Petitioner. This has been specially averred by the Petitioner in the Writ Petition, as can be discerned from ground 9(iv). The Petitioner has questioned the legality of the proceedings inter alia on that basis. However, in the reply filed before this Court on behalf of the Respondents, there is no denial of the said allegation made in the Petition. In this backdrop, learned Government Advocate appearing for the Respondents was called upon to produce the original

record. We have perused the record with the assistance of the learned Government Advocate and we find that personal notice in respect of hearing of Section 5A proceedings was not given to the Petitioner. As that position is indisputable, in law, the steps taken subsequent thereto including Section 6 Notification cannot be sustained. Learned Counsel for the Petitioner has rightly relied on the decisions of this Court in 1994(4) Bom.C.R.28 **Pushpabai Wamanrao Deotale** v. **The State of Maharashtra through Secretary, Revenue Department, Mantralaya, Bombay and others** (para 9 thereof) and 2001(Supp.) Bom.C.R. 706 **Khushalrao Tulshiramjui Pandao and others** v. **State of Maharashtra, through its Secretary and others**(para 10). Accordingly, both Notifications under challenge will have to be quashed and set aside qua the Petitioner herein only.

4. Mrs. Winnie Coutinho, learned Government Advocate appearing for the Respondents contended that the Respondents would issue fresh notice to the Petitioner in respect of Section 5A proceedings and they would take necessary steps in accordance with law from that stage. However, it is not possible to accept this submission since proviso to Section 6 clearly mandates that the Notification under Section 6 should be issued within one year from the date of Section 4 Notification. In the present case, Section 4 Notification was issued on 9th

August, 2002 and, if we were to permit the Respondents to continue the proceedings from Section 5A stage that would result in issuance of Notification under Section 6 of the Act after a lapse of one year, which is impermissible in law.

5. In the circumstances, the Petition would succeed on the aforesaid ground and consequently both the Notifications issued under Section 4 as well as Section 6 of the Act are quashed and set aside qua the Petitioner herein only and, therefore, all steps taken pursuant to the said Notifications by the authorities will have to be treated as effaced, in law. Petition is allowed on the aforesaid terms with costs.

A. M. KHANWILKAR, J.

P. V. HARDAS, J.

RD.